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Attorneys for Plaintiff JENS ERIK SORESENSEN,
as Trustee of SORESENSEN RESEARCH AND
DEVELOPMENT TRUST

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

JENS ERIK SORENSSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiff

V.

THE BLACK & DECKER CORPORATION;
BLACK & DECKER, INC.; BLACK &
DECKER (US), INC.; PORTER-CABLE
CORPORATION; VECTOR PRODUCTS,
INC.; PHILLIPS PLASTICS CORPORATION;
HI-TECH PLASTICS INC.; B&D HOLDINGS,
LLC; AND DOES 1 THROUGH 1000,

Defendants.

) Case Nos. 06-CV-1572 BTM (CAB)
)
) **MEMORANDUM OF POINTS &**
) **AUTHORITIES IN SUPPORT OF**
) **PLAINTIFF'S MOTION TO**
) **CONSOLIDATE**

) Date: May 30, 2008
) Time: 11:00 a.m.
) Courtroom: 15, Fifth Floor
) Hon. Barry Ted Moskowitz

) NO ORAL ARGUMENTS UNLESS
) REQUESTED BY THE COURT

**JENS ERIK SORESENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST.**

Plaintiff,

V.

Case No. 07-CV-2121

GIANT INTERNATIONAL (USA) LTD., a
Delaware corporation, and DOES 1-10,
Defendants.

and related counterclaims.

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiff,

v.

ESSEPLAST (USA) NC, INC., a Delaware
corporation, and DOES 1-100,

Defendants.

and related counterclaims

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiff,

v.

HELEN OF TROY TEXAS CORPORATION;
OXO INTERNATIONAL LTD.;
and DOES 1 – 100,

Defendants.

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiff,

v.

ENERGIZER HOLDINGS INC, a Missouri
corporation; EVEREADY BATTERY
COMPANY, INC.; and DOES 1 – 100,

Defendants.

and related counterclaims.

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Case No. 07cv2277

Case No. 07cv2278

Case No. 07cv2321

Case No. 08cv0025

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Plaintiff

v.

EMERSON ELECTRIC CO., a Missouri corporation; ONE WORLD TECHNOLOGIES, INC., a Delaware corporation; RIDGE TOOL COMPANY, an Ohio corporation; RIDGID, INC., a Delaware corporation; and DOES 1 – 100

Defendants.

and related counterclaims

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Case No. 08cv0060

Plaintiff

v.

RYOBI TECHNOLOGIES, INC., a Delaware corporation; TECHTRONIC INDUSTRIES NORTH AMERICA, INC., a Delaware corporation; and DOES 1 – 100,

Defendants.

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Case No. 08cv0070

Plaintiff

v.

SENCO PRODUCTS, INC., an Ohio corporation; and DOES 1 – 100,

Defendants.

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,

Case No. 08cv0134

Plaintiff

v.

INFORMATICS, INC., a Texas Corporation; INFORMATICS HOLDINGS, INC., a Delaware Corporation; DATA LOGIC SCANNING, INC.

1 Corporation; DATALOGIC SCANNING, INC.,)
 2 a Delaware Corporation; DATALOGIC)
 3 SCANNING HOLDINGS, INC., a New York)
 Corporation.)

4 Defendants.)

5 JENS ERIK SORENSEN, as Trustee of)
 6 SORENSEN RESEARCH AND)
 DEVELOPMENT TRUST,)

7 Plaintiff)

8 v.)

9 SANYO NORTH AMERICA CORPORATION,)
 a Delaware Corporation; and DOES 1 – 100,)

10 Defendants.)

11 JENS ERIK SORENSEN, as Trustee of)
 12 SORENSEN RESEARCH AND)
 DEVELOPMENT TRUST,)

13 Plaintiff)

14 v.)

15 MOTOROLA, INC., a Delaware Corporation;)
 16 and DOES 1 – 100,)

17 Defendants.)

18 JENS ERIK SORENSEN, as Trustee of)
 19 SORENSEN RESEARCH AND)
 DEVELOPMENT TRUST,)

20 Plaintiff)

21 v.)

22 CTT TOOLS, INC., a California Corporation;)
 and DOES 1 – 100,)

23 Defendants.)

24 JENS ERIK SORENSEN, as Trustee of)
 25 SORENSEN RESEARCH AND)
 DEVELOPMENT TRUST,)

26 Plaintiff)

27 v.)

28 ALLTRADE TOOLS, LLC., a California)
 Corporation; and DOES 1 – 100,)

Case No. 08cv0135

Case No. 08cv0136

Case No. 08cv0231

Case No. 08cv0232

1 Corporation; and DOES 1 – 100,

2 Defendants.

3 JENS ERIK SORENSEN, as Trustee of
4 SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

5 Plaintiff

6 v.

7 GLOBAL MACHINERY COMPANY, an
8 Australian company; GMCA PTY. LTD., an
9 Australian company; TRAPONE
CORPORATION PTY. LTD., an Australian
company; and DOES 1 – 100,

10 JENS ERIK SORENSEN, as Trustee of
11 SORENSEN RESEARCH AND
12 DEVELOPMENT TRUST,

13 Plaintiff

14 v.

15 EMISSIVE ENERGY CORP., a Delaware
Corporation; and DOES 1 – 100,

16 Defendants.

17 JENS ERIK SORENSEN, as Trustee of
18 SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

19 Plaintiff

20 v.

21 METABO CORPORATION, a Delaware
22 Corporation; METABOWERKE GMBH, a
German Corporation; and DOES 1 – 100,

23 Defendants.

24 JENS ERIK SORENSEN, as Trustee of
25 SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

26 Plaintiff

27 v.

28 RALLY MANUFACTURING, INC., a Florida

) Case No. 08cv0233

) Case No. 08cv0234

) Case No. 08cv0304

) Case No. 08cv0305

1 Corporation; and DOES 1 – 100,

2 Defendants.

3 JENS ERIK SORENSEN, as Trustee of
4 SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

5 Plaintiff

6 v.

7 SUNBEAM PRODUCTS, INC., a Delaware
8 Corporation; and DOES 1 – 100,

9 Defendants.

10 JENS ERIK SORENSEN, as Trustee of
11 SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

12 Plaintiff

13 v.

14 STAR ASIA, U.S.A., LLC, a Washington
15 Corporation; and DOES 1 – 100,

16 Defendants.

17 JENS ERIK SORENSEN, as Trustee of
18 SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

19 Plaintiff

20 v.

21 LOGITECH INC., a California Corporation; and
DOES 1 – 100,

22 Defendants.

23 JENS ERIK SORENSEN, as Trustee of
24 SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

25 Plaintiff

26 v.

27 CENTRAL PURCHASING, LLC, a California
28 Corporation; and DOES 1 – 100,

Case No. 08cv0306

Case No. 08cv0307

Case No. 08cv0308

Case No. 08cv0309

Defendants.

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiff

v.

KYOCERA INTERNATIONAL, INC., a
California Corporation; KYOCERA WIRELESS
CORP., a California Corporation; and DOES 1 –
100,

Defendants.

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiff

v.

DMS HOLDINGS, INC. d.b.a. MABIS
HEALTHCARE and DURO-MED
INDUSTRIES, a a Delaware Corporation; and
DOES 1 – 100,

Defendants.

Case No. 08cv0411

Case No. 08cv0559

INTRODUCTION

The 23 patent infringement cases identified below were filed by Plaintiff Jens Erik Sorensen, Trustee of Sorensen Research And Development Trust (“Sorensen”) seeking redress for infringement of U.S. Patent No. 4,935,184 (“184 patent”). All are currently pending in this District and all have been assigned to District Judge Barry T. Moskowitz.

Sorensen seeks to consolidate these related cases pursuant to Rule 42(a) of the *Federal Rules of Civil Procedure* because these cases have overlapping questions of

law and fact. Specifically, all of the cases allege infringement of the same patent and the Court has already indicated an intention to conduct a joint claim construction hearing. All of the responding defendants thus far have claimed that the '184 patent is invalid, and have also asserted entitlement to a stay pending completion of *ex parte* reexamination proceedings requested by defendants in the low-numbered Black & Decker case.

Both Court and all parties would benefit from consolidation of claim construction, discovery, and other related matters. Thus, consolidation of these actions is appropriate.

PROCEDURAL BACKGROUND

Presently pending in this District are 23 related patent infringement cases¹, the short names of which are as follows:

| <u>Abbr. Case Name</u> | <u>Case No.</u> | <u>Date Filed</u> |
|-----------------------------------|-----------------|-------------------|
| Sorensen v. Black & Decker, et al | 06cv1572 | Aug 7, 2006 |
| Sorensen v. Giant Int'l | 07cv2121 | Nov 6, 2007 |
| Sorensen v. Esseplast | 07cv2277 | Dec 4, 2007 |
| Sorensen v. Helen of Troy | 07cv2278 | Dec 4, 2007 |
| Sorensen v. Energizer | 07cv2321 | Dec 11, 2007 |
| Sorensen v. Emerson | 08cv0060 | Jan 10, 2008 |
| Sorensen v. Ryobi | 08cv0070 | Jan 11, 2008 |
| Sorensen v. Senco | 08cv0071 | Jan 11, 2008 |
| Sorensen v. Informatics | 08cv0134 | Jan 23, 2008 |
| Sorensen v. Sanyo | 08cv0135 | Jan 23, 2008 |
| Sorensen v. Motorola | 08cv0136 | Jan 23, 2008 |
| Sorensen v. CTT Tools | 08cv0231 | Feb 5, 2008 |
| Sorensen v. Alltrade | 08cv0232 | Feb 5, 2008 |
| Sorensen v. Global Machinery | 08cv0233 | Feb 5, 2008 |
| Sorensen v. Emissive Energy | 08cv0234 | Feb 5, 2008 |
| Sorensen v. Metabo | 08cv0304 | Feb 15, 2008 |
| Sorensen v. Rally | 08cv0305 | Feb 15, 2008 |

¹ An additional case based on the same patent is Sorensen v. Johnson Level, Case No. 08cv0025. Consolidation of this case is not sought because it has already had a default entered.

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|---|--------------------------------|----------|--------------|
| 1 | Sorensen v. Sunbeam | 08cv0306 | Feb 15, 2008 |
| 2 | Sorensen v. Star Asia | 08cv0307 | Feb 15, 2008 |
| 3 | Sorensen v. Logitech | 08cv0308 | Feb 15, 2008 |
| 4 | Sorensen v. Central Purchasing | 08cv0309 | Feb 15, 2008 |
| 5 | Sorensen v. Kyocera | 08cv0411 | Mar 4, 2008 |
| 6 | Sorensen v. DMS Holdings | 08cv0559 | Mar 25, 2008 |

7 Stays have been issued in Sorensen v. Black & Decker (3:06-cv-01572),
8 Sorensen v. Giant (3:07cv2121), Sorensen v. Esseplast (3:07-cv-02277), Sorensen v.
9 Energizer (3:07-cv-02321), Sorensen v. Helen of Troy Texas Corporation (3:07-cv-
10 02278).

11 Motions for Stay are pending in Sorensen v. Emerson (3:08-cv-00060);
12 Sorensen v. Global Machinery (3:08-cv-00233), Sorensen v. Kyocera (3:08-cv-
13 00411), Sorensen v. Rally (3:08-cv-00305), Sorensen v. Ryobi (3:08-cv-00070),
14 Sorensen v. Senco (3:08-cv-00071), Sorensen v. Central Purchasing (3:08-cv-
15 00309).

16 In all unstayed cases, Sorensen has filed Motions to Modify Patent Local
17 Rules Schedule to Accelerate Identification of Claimed Invalidating Prior Art and
18 intends to request the same relief in the stayed cases.

19 ARGUMENT

20
21 THIS COURT SHOULD CONSOLIDATE THESE RELATED CASES FOR
22 PURPOSES OF EFFICIENCY.

23 Fed.R.Civ.P. Rule 42(a) allows this Court to order consolidation of separate
24 actions:

25
26 When actions involving a common question of law and fact are pending
27 before the court, it may order a joint hearing or trial of any or all the
28 matters in issue in the actions; it may order all the actions consolidated;

1 and it may make such orders concerning proceedings therein as may
2 tend to avoid unnecessary costs or delay.

3 Consolidation pursuant to the Rule 42(a) is proper where, as here, actions
4 involve common questions of law and fact. *In re Equity Funding Corp. of Am. Sec.*
5 *Litig.*, 416 F. Supp. 161, 175 (C.D. Cal. 1976). This Court has broad discretion under
6 this Rule to consolidate cases pending within this District. *Perez-Funez v District*
7 *Director, Immigration and Naturalization Serv.*, 611 F. Supp. 990, 994 (C.D. Cal.
8 1984) (“[A] Court has broad discretion in deciding whether or not to grant a motion
9 for consolidation, although, typically, consolidation is favored.”) (citation omitted).
10 Even if there are some questions that are not common, consolidation is not
11 precluded. *Batazzi v. Petroleum Helicopters, Inc.*, 664 F. 2d 49, 50 (5th Cir. 1981);
12 See *Central Motor Co. v. United States*, 583 F. 2d 470 (10th Cir. 1978).

13 Common questions of law and fact abound in these cases. All the cases allege
14 infringement of United States Patent No. 4,935,184 and claim construction of the
15 patent should be conducted jointly.

16 All of the responding defendants have made *pro forma* assertions of invalidity
17 of the patent. The basis for these assertions should be disclosed so that any asserted
18 prior art can be brought before the PTO during the existing reexamination
19 proceedings that have prompted the pending stays of litigation.

20 All of the responding defendants have asserted entitlement to a stay pending
21 completion of *ex parte* reexamination proceedings requested by Black & Decker,
22 Phillips Plastics and Hi-Tech Plastics. Thus far, the Court has granted stays to every
23 additional defendant (after the Black & Decker defendants) requesting a stay on this
24 basis, even though the most recent filed Opposition to Motion for Stay (Sorensen v.
25 Energizer, Case No. 07cv2321) contained new information demonstrating that
26 reexaminations were likely to take much longer than the two years anticipated by the
27 Court when the initial stay was entered.

28 Because of the significant overlap of legal and factual issues, these cases are

1 particularly appropriate for consolidation.
2

3 **CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests that this Court
5 consolidate the related actions identified herein pursuant to Fed.R.Civ.P. Rule 42(a).
6

7 Dated this Wednesday, April 09, 2008.
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9 Respectfully submitted,

10 JENS ERIK SORENSEN, as Trustee of SORENSEN
11 RESEARCH AND DEVELOPMENT TRUST, Plaintiff

12 /s/ Melody A. Kramer

13 J. Michael Kaler

14 Melody A. Kramer

15 Patricia A. Shackelford

16 Attorneys for Plaintiff
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